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9 Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.) BK-S-06-10725-LBR Chapter 11
13 In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.) BK-S-06-10726-LBR Chapter 11
14 In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.) BK-S-06-10727-LBR Chapter 11
15 In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.) BK-S-06-10728-LBR Chapter 11
16 In re: USA SECURITIES, LLC, Debtor.) BK-S-06-10729-LBR Chapter 11
17 Affects <input type="checkbox"/> All Debtors <input type="checkbox"/> USA Commercial Mortgage Co. <input type="checkbox"/> USA Securities, LLC <input type="checkbox"/> USA Capital Realty Advisors, LLC <input type="checkbox"/> USA Capital Diversified Trust Deed <input checked="" type="checkbox"/> USA First Trust Deed Fund, LLC) Hearing Date: August 23, 2007 Time: 9:30 a.m. Place: Courtroom #1

25 **RESPONSE OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF**
26 **USA CAPITAL FIRST TRUST DEED FUND, LLC TO USA CAPITAL FIRST TRUST**
27 **DEED FUND, LLC'S MOTION TO CLOSE CASE AND REQUEST FOR FINAL**
DECREE (AFFECTS DEBTOR USA CAPITAL FIRST TRUST DEED FUND, LLC)

28

1 1. The Official Committee of Equity Security Holders of USA Capital First
 2 Trust Deed Fund, LLC (the "FTDF Committee") hereby files its response to the USA Capital First
 3 Trust Deed Fund, LLC's (the "FTDF") Motion to Close Case and Request for Final Decree (the
 4 "Motion to Close").

5 2. Pursuant to the Motion, the FTDF seeks an order closing its chapter 11 case
 6 and request for entry of a final decree. On July 7, 2007 Compass USA SPE LLC, Compass
 7 Financial Partners, LLCA, a Nevada limited liability company and Compass Financial Partners,
 8 LLC, a Delaware limited liability company (collectively, "Compass") filed a complaint to revoke
 9 the order confirming the joint chapter 11 plan entered in the cases of the above-captioned debtors,
 10 including the FTDF (collectively, the "Debtors"), and to rescind the asset purchase agreement
 11 between Compass and the Debtors (the "Complaint"). Compass also has requested that the
 12 Complaint be held in suspension pending resolution of certain other litigation. The defendants in
 13 the Compass action are the Debtors, including the FTDF, and the members of the Lender
 14 Protection Group (the "LPG").

15 3. Prior to the filing of the Complaint, the FTDF was in the process of winding
 16 up its estate in preparation for the closing of the FTDF case and the dissolution of the FTDF. Due
 17 to the continued incurrence of professional fees and costs against the FTDF as long as the case
 18 remains open, the fact that no other tasks remained for the FTDF to complete other than usual wind
 19 down tasks, and the fact that the FTDF is a litigation target as long as the case remains open, the
 20 FTDF Committee believed that it did not make sense to suspend the Complaint as requested by
 21 Compass. Further, closing the FTDF case subject to the pending Complaint (which this Court may
 22 not even entertain given the fact that the Complaint seeks to revoke the confirmation order and
 23 rescind the asset purchase agreement that provided for the sale of substantially all of the FTDF
 24 assets), left the FTDF members at risk of the case being re-opened and the members potentially
 25 being pursued for disgorgement of sale proceeds distributions from the FTDF. Accordingly, on
 26 July 27, 2007, the FTDF Committee filed a motion to dismiss the Complaint against FTDF (the
 27 "Motion to Dismiss"). The hearing on the Motion to Dismiss is set for August 23, 2007 – the same
 28 date and time as the hearing on the Motion to Close.

1 4. At this time, the FTDF Committee has no objection to the closing of the
 2 FTDF case and the entry of a final decree so long as the Complaint has been resolved either
 3 consensually by the parties or by final order granting the Motion to Dismiss. Indeed, the FTDF
 4 Committee urged FTDF to file the Motion to Close and set it for hearing on August 23, 2007 so
 5 that if the Complaint was resolved, then the FTDF case could be rapidly closed and a final decree
 6 entered. However, to the extent, the Complaint remains pending as of August 23, 2007, and the
 7 Court either declines to grant the Motion to Dismiss or Compass appeals an order granting the
 8 Motion to Dismiss,¹ then the FTDF Committee respectfully requests that the Motion to Close be
 9 adjourned to a later date.

10 5. After the Motion to Close had been filed, the USACM Liquidating Trust
 11 notified FTDF and the FTDF Committee that several proof of claim against FTDF had been
 12 mistakenly filed in the USACM case. The USACM Liquidating Trust and the FTDF Committee
 13 jointly prepared and filed objections to these claims with the FTDF Committee's based primarily
 14 on the grounds that the claims are actually equity interests in the FTDF. Given the 30 day notice
 15 requirement for objections to claim provided in Federal Rule of Bankruptcy Procedure 3007 and
 16 the Court's calendar, the claim objections have been set for the first hearing available after August
 17 23, 2007, which is October 15, 2007. The claim objections were served on August 8, 2007 and the
 18 notice of the claim objections provides that the objection response time is October 8, 2007 "unless
 19 the response deadline is advanced by the Court." If the FTDF case is ready to be closed by August
 20 23, 2007, the FTDF Committee is hopeful that the Court will consider having a duty judge hear the
 21 claim objections sometime after September 8, 2007, which is 30 days from service of the claim
 22 objections so that the FTDF case need not remain open through the end of October 2007. In the
 23 alternative, if the Court will not permit the claim objections to be set for hearing before a duty
 24

25 1 If the Motion to Dismiss is granted, the FTDF Committee would request that an order
 26 granting the Motion to Close not be submitted until termination of the appeal period on the order
 27 granting the Motion to Dismiss. If any appeal of the Motion to Dismiss is filed, then an order
 28 adjourning the Motion to Close (rather than an order granting the Motion to Close) would be
 submitted to the Court.

1 judge, the FTDF Committee respectfully requests that if the FTDF case is ready to be closed, that
2 the Court close the FTDF case and retain jurisdiction solely for the claim objections pending in the
3 FTDF.

4 **WHEREFORE**, the FTDF Committee respectfully requests that the (1) the Court grant
5 the Motion to Close only if the Complaint has been resolved by the parties or through final order
6 of the Court and if the Complaint has not been so resolved, adjourn the hearing on the Motion to
7 Close to the next available hearing date and (2) if the FTDF estate is ready to be closed, that the
8 Court set the hearings on the claim objections before a duty judge for as soon as possible after
9 September 8, 2007, or close the FTDF case subject to the Court's retention of jurisdiction solely
10 for the pending claims objections in FTDF.

11 Respectfully submitted this 14th day of August, 2007.

12

/s/ Eve H. Karasik

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